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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,952	02/27/2004	Robert L. McMahan	2197-040452	5785

7590 05/31/2005

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EXAMINER

GROSZ, ALEXANDER

ART UNIT	PAPER NUMBER
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3673

DATE MAILED: 05/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/789,952

Applicant(s)

MCMAHAN, ROBERT L.

Examiner

Alexander Grosz

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 2/24/08
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) 8-10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ~~1-10~~ is/are allowed.
- 6) ☒ Claim(s) 1-3, 7 is/are rejected.
- 7) ☒ Claim(s) 4-6 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 2/24/05 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☒ Interview Summary (PTO-413)  
Paper No(s)/Mail Date 05/13/05
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

Applicant's election with traverse of the claims of Group I in the reply filed on 2/24/05 is acknowledged. The traversal is on the ground(s) that both of the groups may be searched in a "single class" and the effort required to do so 'is believed to be minimal". This is not found persuasive because the criteria set forth in MPEP § 806.05(b) for the propriety of a restriction for "product" and "process of use" have been clearly met. The fact that both inventions are classified in the same class and the perceived magnitude of the required "effort" are immaterial to the above identified criteria.

The requirement is still deemed proper and is therefore made FINAL.

Claims 8-10 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 2/24/05.

On 5/4/05, I called Mr. Logsdon to indicate that claims 4-6 could be allowed if presented in independent condition, and I identified the prior art cited on attached PTO-892. On 5/11 and 5/12 Mr. Porcelli called to discuss the claims, but no agreement was reached.

Numeral 41 is confusingly used to identify an outer wall on page 6, line 5, and an inner wall on ~~page~~ 6, line 15. 11

From the description and figures, it is not clear how exactly angle X is measured. Further explanation and/or correction is required. 5

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Claim 3 is objected to. As discussed above, it is not clear how the angle is measured.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 7 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Peschel.

Note use for head board or foot board (page 1, line 4) and figure 1. The desired function is inherently met by Peschel's geometry.

Claims 1, 7 are further rejected under 35 U.S.C. 102(b) as being clearly anticipated by Stanton or Partridge (note element 32).

Claims 4-6 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Mohundro (note Fig. 2), Zaidman, and Hamblin (note Fig. 1), are cited as relevant art.

Any inquiry concerning this communication should be directed to Alex Grosz at telephone number 571-272-7041.

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Grosz/vs  
May 25, 2005

ALEXANDER GROSZ  
PRIMARY EXAMINER

A handwritten signature in black ink, consisting of a large, sweeping loop followed by a series of smaller, more intricate strokes, positioned over the printed name and title.